

"(11) ALTERNATIVE METHOD OF SATISFYING TESTS.—

"(A) IN GENERAL.—A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan—

"(i) meets the contribution requirements of subparagraph (B) or (C) of subsection (k)(12),

"(ii) meets the notice requirements of subsection

(k)(12)(D), and

"(iii) meets the requirements of subparagraph (B).

"(B) LIMITATION ON MATCHING CONTRIBUTIONS.—

The requirements of this subparagraph are met if—

"(i) matching contributions on behalf of any employee may not be made with respect to an employee's contributions or elective deferrals in excess of 6 percent of the employee's compensation.

"(ii) the rate of an employer's matching contribution does not increase as the rate of an employee's contributions or elective deferrals increase, and

"(iii) the matching contribution with respect to any highly compensated employee at any rate of an employee contribution or rate of elective deferral is not greater than that with respect to an employee who is not a highly compensated employee."

(c) YEAR FOR COMPUTING NONHIGHLY COMPENSATED

EMPLOYEE

PERCENTAGE.—

(1) CASH OR DEFERRED ARRANGEMENTS.—Section

401(k)(3)(A) is amended—

(A) by striking "such year" in clause (ii) and inserting

"the plan year",

by striking "for such plan year" in clause

(2)

(ii) and

inserting "for the preceding plan year". and

(3)

by adding at the end the following new

sentence:

"An arrangement may apply clause (ii) by using the plan year rather than the preceding plan year if the employer so elects, except that if such an election is made, it may not be changed except as provided by the Secretary."

(2) MATCHING AND EMPLOYEE CONTRIBUTIONS.—

Section

401(m)(2)(A) is amended—

(4)

by inserting "for such plan year"

after "highly

compensated employees",

(5)

by inserting "for the preceding plan

year" after

"eligible employees" each place it appears in clause (i)

and clause (ii), and

(6)

by adding at the end the following flush

sentence:

"This subparagraph may be applied by using the plan year rather than the preceding plan year if the employer so elects. except that if such an election is made, it may not be changed except as provided by the Secretary."

(d) SPECIAL RULE FOR DETERMINING AVERAGE DEFERRAL PERCENTAGE FOR FIRST PLAN YEAR, ETC.—

(1) Paragraph (3) of section 401(k) is amended by adding at the end the following new subparagraph:

"(E) For purposes of this paragraph, in the case of the first plan year of any plan (other than a successor plan), the amount taken into account as the actual deferral percentage of nonhighly compensated employees for the preceding plan year shall be—